

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JAMES RUSSELL,

Petitioner,

v.

STEPHEN JOHNSON, et al.,

Respondents.

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Civ. No. 20-3478 (PGS)

MEMORANDUM & ORDER

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 31, 2020, this Court received an electronic copy of Petitioner's habeas petition. (*See* ECF 1). Petitioner challenges his judgment of conviction for murder and conspiracy to murder arising out of state criminal case number 09-01-101-1. Petitioner was sentenced in that case on December 2, 2009.

After this habeas petition was filed in this case, it was mistakenly closed as duplicative of another federal habeas case Petitioner has pending before this Court at No. 20-1312. In that habeas action, Petitioner is challenging a separate conviction for murder arising out of state criminal case number 06-05-0869-1. (*See* No. 20-1312 ECF 1). Petitioner was sentenced in that case on December 17, 2008. Given that it appears that the habeas petition in this case, 20-3478, arises out of a different criminal proceeding than in 20-1312, the Clerk will be ordered to reopen this case as it was improperly closed as duplicative.

The habeas petition though did not include an application to proceed *in forma pauperis* nor did it include a prepaid \$5.00 filing fee. Thus, this case will be re-administratively closed. Petitioner shall be given an opportunity to reopen this action should he so choose.

Therefore, IT IS this 15 day of ~~June~~^{Sept}, 2020,


ORDERED that the Clerk shall reopen this action as it is not duplicative of No. 20-1312; and it is further

ORDERED that the Clerk of the Court shall administratively terminate this case; Petitioner is informed that administrative termination is not a “dismissal” for purposes of the statute of limitations, and that if the case is reopened, it is not subject to the statute of limitations time bar if it was originally filed timely, *see Papotto v. Hartford Life & Acc. Ins. Co.*, 731 F.3d 265, 275 (3d Cir. 2013) (distinguishing administrative terminations from dismissals); *Jenkins v. Superintendent of Laurel Highlands*, 705 F.3d 80, 84 n.2 (3d Cir. 2013) (describing prisoner mailbox rule generally); and it is further

ORDERED that if Petitioner wishes to reopen this case, he shall so notify the Court, in writing addressed to the Clerk of the Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 E. State Street, Trenton, NJ 08608, within thirty (30) days of the date of entry of this memorandum and order; Petitioner’s writing shall include either the \$5.00 filing fee or a complete application to proceed *in forma pauperis*; and it is further

ORDERED that upon receipt of a writing from Petitioner stating that he wishes to reopen this case and either the \$5.00 filing fee or a complete application to proceed *in forma pauperis*, the Clerk will be directed to reopen this case; and it is finally

ORDERED that the Clerk shall serve upon petitioner by regular U.S. mail: (1) a copy of this memorandum and order; and (2) a blank form application to proceed *in forma pauperis* by a prisoner in a habeas corpus case.


PETER G. SHERIDAN
United States District Judge